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Nos. 75-507 and 75-538

In the Supreme Court of the United States

OCTOBER TERM, 1975

DONALD MATTHEWS, PETITIONER

v.

UNITED STATES OF AMERICA

MIKE GRANCICH, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

RICHARD L. THORNBURGH,
Assistant Attorney General,

JEROME M. FEIT,
MICHAEL J. KEANE,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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OPINION BELOW

The opinion of the court of appeals (No. 75-507 Pet. App. 1-27; No. 75-538 Pet. App. 1-21) is reported at 518 F.2d 352.

JURISDICTION

The judgment of the court of appeals was entered on June 4, 1975. A petition for rehearing accompanied by a suggestion for rehearing *en banc* was denied on September 2, 1975. The petition for a writ of certiorari in No. 75-507 was filed on October 1, 1975. Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari in No. 75-538 to October 8, 1975, and the petition was filed on October 7, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

By all petitioners except Martinez:

1. Whether petitioners' convictions for racketeering activities under 18 U.S.C. 1962 must be reversed because they were not shown to be members of "organized crime," or because the convictions conflict with *United States* v. *Enmons*, 410 U.S. 396.

2. Whether 18 U.S.C. 1962 is void for vagueness.

3. Whether 18 U.S.C. 1962 is an invalid *ex post facto* law.

By all petitioners:

4. Whether judicial bias or prosecutorial misconduct denied petitioners due process ~~(all petitioners)~~.

5. Whether the evidence was sufficient to sustain petitioners' convictions.

STATUTES INVOLVED

18 U.S.C. 1951 provides in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section— * * *
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

18 U.S.C. 1961 provides in pertinent part:

> As used in this chapter—
>
> (1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: * * * section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), * * * section 1951 (relating to interference with commerce, robbery, or extortion), * * * (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) * * *
>
> (3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

18 U.S.C. 1962 provides in pertinent part:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

STATEMENT

Petitioners Galea, Grancich, and Martinez, and co-defendants Anthony Jayich, Peter Macht, David Santana, Charles Rico, and Edward Chacon, were members of Meat and Provisions Drivers, Teamsters Local 626 ("Local 626"). Petitioner Matthews and co-defendant Enrico Campanale were part owners of

Pronto Loading and Unloading Company ("Pronto"). On June 29, 1972, a nine-count indictment was returned in the United States District Court for the Central District of California charging these individuals with various offenses in connection with their intimidation of meat packers in Vernon, California, into using Pronto's services and their extortion of money from Pronto's competitors as a condition of the competitors' continuance in business.

Counts 1 and 2 charged separate conspiracies, in violation of 18 U.S.C. 1962(d), to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c). Counts 3 and 4 charged requesting and receiving money in violation of 29 U.S.C. 186. Counts 5, 6, and 7 charged obstructing interstate commerce by extortion, in violation of 18 U.S.C. 1951. Counts 8 and 9 charged picketing for personal profit, in violation of 29 U.S.C. 522.[1]

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[1] The individuals charged in each count were as follows:

Count 1: all petitioners and co-defendant Campanale.

Count 2: petitioners Galea, Grancich and Martinez, and co-defendants Chacon, Jayich, Macht and Rico.

Counts 3 and 4: petitioners Galea and Grancich.

Count 5: petitioners Galea, Grancich and Matthews, and co-defendant Campanale.

Count 6: petitioner Matthews and co-defendant Campanale.

Count 7: petitioner Galea.

Count 8: petitioner Galea and co-defendants Jayich, Macht, Rico and Santana.

Count 9: co-defendants Chacon, Macht and Rico.

By a separate indictment returned February 13, 1973, and consolidated for trial with the one just described, petitioners Galea and Martinez were charged with obstructing justice, in violation of 18 U.S.C. 1503.

Following a jury trial in March 1973, all defendants save petitioner Martinez were convicted on Count 1, and the court of appeals affirmed these convictions. Petitioner Martinez and co-defendants Chacon and Rico were acquitted on Count 2, and the court of appeals reversed the convictions of the other defendants on this count (Pet. App. 7-10).[2]

Petitioners Galea and Grancich were both convicted on Counts 3 and 4, and the court of appeals affirmed these convictions.

On Count 5 petitioner Grancich was acquitted but petitioners Galea and Matthews and co-defendant Campanale were convicted. Campanale and petitioner Matthews were also convicted on Count 6, and petitioner Galea was convicted on Count 7. The court of appeals affirmed all these convictions.

All defendants were acquitted on Counts 8 and 9. Petitioners Galea and Martinez were also convicted of obstructing justice as charged in the February 1973 indictment and the court of appeals affirmed (Pet. App. 25-27).[3]

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[2] This and all other references herein to the court of appeals' opinion will be to the appendix in No. 75-507.

[3] Petitioner Grancich was sentenced to four years' imprisonment on Count 1, and to one year's imprisonment on each of Counts 3 and 4, to run concurrently to the sentence on Count 1. Petitioner Galea was given the same sentence as Grancich on Counts 1, 3, and 4, and in addition was sentenced to five years' probation on each of Counts 5 and 7, the sentences to run consecutively to the sentence on Count 1, and to four years' imprisonment on the February 1973 charge, the sentence to run concurrently with the sentence on Count 1.

Petitioner Martinez was sentenced to four years' imprisonment on the February 1973 charge. Petitioner Matthews was sentenced to four years' imprisonment on Count 1, to six months' imprisonment on Count 5, the sentence to run consecutively to that imposed on Count 1, and to six months' imprisonment on Count 6, the sentence to run concurrently to the sentence imposed on Count 1.

Galea and Grancich were also sentenced to six months' imprisonment for their convictions under Count 2, which the court of appeals reversed.

1. The offloading of meat shipments to the processors and packers in Vernon, California is performed by unloading companies rather than employees of either the packers or the delivering carriers. In April 1969, petitioner Galea, a business agent of Local 626, met with the Pronto partners[4] and informed them that Local 626 could arrange a virtual monopoly of the meat unloading business in Vernon if Pronto would pay $500 weekly to Local 626. Galea said that Local 626 would not enter into union contracts with any other unloading company and that any contract signed with Pronto could be ignored (Tr. 247-249). If Pronto encountered any problems in unloading trucks, Galea or any other union official

[4] Although Pronto was a closed corporation (Tr. 253), the six owners referred to themselves as "partners" (Tr. 272, 282, 312, 314, 354). Of these partners only petitioner Matthews and Campanale were indicted.

was to be contacted (Tr. 247-248). The Pronto partners agreed to the scheme. A contract with the union was signed on April 26, 1969 (Govt. Exh. 3); its terms were never observed (Tr. 263-267).[5]

Petitioner Matthews or Campanale paid Galea $500 per week from April 1969 to January 9, 1970, when pursuant to Galea's demand the amount rose to $600 weekly in recognition of Local 626's having obtained the Choe Meat Company and High Standards Meat Company unloading accounts for Pronto (Tr. 269-270, 273, 275, 278, 374). Galea split the money with petitioner Grancich and Joe Loya[6] (Tr. 269-270, 273-275). Initially $450 of the payment to Galea was in the form of a Pronto check endorsed by and ordinarily made payable to Matthews (Govt. Exhs. 5A-5Z, 5AA-5J; Tr. 269-270, 928). When Matthews realized that he might incur income tax liability by this method, however, he consulted with the other Pronto partners and they thereafter paid Galea from Pronto's cash receipts (Tr. 269-272, 374, 377-378, 385-387). The $600 weekly cash payments were made either by Matthews or Campanale and

[5] Matthews, who managed Pronto's financial affairs, instructed his partners to assure that none of the employees saw the contract or became aware of its sick leave provisions because he did not want to pay the benefits prescribed therein (Tr. 256-258, 266).

[6] Loya, a Local 626 business agent who was named as a co-conspirator, died prior to the return of the indictment.

extended from January 1970 to April 1972 (Tr. 275, 278, 1981, 1984, 1997).

As part of the conspiracy other meat packers were intimidated and forced into contracting with Pronto. Howard Choe, president of Choe Meat Company, who had previously used members of the Butchers Union to unload meat and preferred that his own Teamster employees unload the trucks (Tr. 157-158), was ordered by petitioner Galea to use only Pronto for unloading (Tr. 153, 155) and complied rather than create trouble for himself (Tr. 155-157).

Similarly, in December 1969 petitioner Galea told Homer Robinson, a partner in High Standard Meat Company, to give the company's unloading account to Pronto (Tr. 167, 173). Galea also told Robinson that Robinson's own Teamsters could unload the meat if four Teamsters per truck were used (even though one would normally be enough). Robinson subsequently hired Pronto in 1970 and used Pronto exclusively thereafter (Tr. 168-169).[7]

The foregoing events, among others, formed the basis for both the conspiracy counts in the indictment.

2. In June 1969, Teamster employees of Quality Meat Packing Company ("Quality") and Gold Pack Meat Company ("Gold Pack") refused to cross picket lines that had been set up around the Quality and

[7] In addition, Kal-Kan Foods acquiesced in petitioner Grancich's demand that it transfer its account to Pronto in 1969 (Tr. 190-191), and continued to use Pronto during 1970 (Tr. 191, 193-194).

Gold Pack plants by the Retail Clerks Union. Irving Gronsky of Gold Pack and Joseph Goldstein of Quality contacted petitioner Galea, who arranged a meeting on June 12, 1969, with petitioner Grancich (Tr. 197-198, 209, 223), at which Goldstein and Gronsky, in Galea's presence, asked Grancich to have the picket lines removed (Tr. 197-199, 224). Grancich indicated that the problem would be solved (Tr. 207) and in fact the picketing ceased at both plants a few hours later (Tr. 199, 224-225).

On the following day Galea demanded $1,500 from Goldstein and Gronsky each for removal of the pickets and threatened a renewal of picketing if they refused to pay (Tr. 209, 223, 225-226, 228). Gronsky paid the full $1,500 (Tr. 199, 203), but Goldstein, complaining that his company with its ninety employees should not be required to pay the same amount as Gold Pack, which had 400 employees (Tr. 195, 221, 227), paid only $800-$1,000 (Tr. 227). These transactions formed the basis of Counts 3 and 4 of the indictment.

3. a. During the conspiracy money was extorted from Pronto's competitors as a condition for their continuance in business. In 1968 petitioner Matthews and Campanale demanded that Blea Unloading Company, a successful business (Tr. 897-899, 910, 931-932), pay $50 weekly to Local 626 or suffer picketing by the union until it went out of business (Tr. 897-899, 910, 933, 964). Blea made such payoffs beginning in September 1968 for eight to twelve months (Tr. 899-900, 937). On one occasion petitioner Galea in Matthews' presence personally collected the money (Tr. 902-903, 935). Blea immediately lost its unloading accounts when it ceased making payments in 1969 (Tr. 937, 964). The meat packers informed Blea that Local 626 had instructed them to use the services of Pronto (Tr. 937).[8] These events formed the basis of Count 5 in the indictment.

b. From April 1968 to March 1972, Eddie Martinez Unloading Company paid petitioner Matthews and Campanale $50 weekly in cash in order to stay in business (Tr. 847, 851, 853, 860, 866, 876-878, 882, 1134-1136, 1139-1140). Martinez customarily made the payments personally but on numerous occasions his son delivered the money (Tr. 876-878, 885-886, 892-893). During the F.B.I. investigation of Local 626 and Pronto, Campanale instructed Martinez to claim that the payoff was in repayment of a loan (Tr. 1139). Although Martinez had in fact borrowed money from Campanale, Martinez's son testified that the weekly payment was being made to the union (Tr. 882, 887).[9] This extortion of money from Martinez was the basis of Count 6.

c. In 1970, after a strike by members of Local 626 and the Butchers Union, Ruchti Brothers, a Vernon

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[8] One meat packer told Blea that he was threatened by petitioner Grancich with union picketing if he permitted Blea to unload (Tr. 961). An employee of another meat packing house, in response to Blea's request for the reason it could no longer unload there, suggested that Blea continue the payoffs to Local 626 (Tr. 960).

[9] This $50 payoff was combined with Pronto's $450-550 payment to make the required $500-$600 payment to Local 626.

meat packing company, closed its plant (Tr. 1691-1693, 1976-1977). Robert Ruchti, II, who had been a two-thirds owner of Ruchti Brothers, purchased two of the defunct plant's meat trucks and began a small meat delivery business, Ruchti Transport Company (Tr. 464-465), which he operated from a rented cooler facility located approximately three miles from the former Ruchti Brothers packing house.

During 1971 and 1972 officials of Local 626 attempted to prevent Ruchti Transport from purchasing meat by threatening meat packers with shutdowns if they sold to Ruchti. In April 1971 Galea demanded $30,000 from Robert Ruchti, II, as a condition of his continued operation (Tr. 476).[10] Ruchti

[10] The defense contended that the $30,000 demand was a legitimate claim for back wages against Ruchti Brothers. After Ruchti Brothers had closed its plant in 1970, employee claims for back wages were submitted to arbitration. Eventually the matter was brought before the National Labor Relations Board. In October 1970 Ruchti Brothers and Local 626 signed an NLRB Settlement Agreement which specified the amount of back pay due individual employees and which stated that the Agreement "disposes of all unfair labor practices alleged in the charge" (Govt. Exh. 17; Tr. 1872-1874). At trial George Pappy, the attorney who signed the Agreement on behalf of Local 626, testified that the Settlement Agreement did not dispose of all claims against Ruchti Brothers for back wages but only those cognizable by the NLRB as unfair labor practices. The NLRB attorney, however, testified that the Agreement settled in full all charges, and that no further claims for back wages were proper (Tr. 1963-1964). The court charged the jury that the accepted settlement of an unliquidated claim, even though for a lesser amount than claimed, extinguishes the entire obligation (Transcript of Proceedings of March 22, 1973, Supplementary Volume of Jury Instructions at 26).

refused to pay and on May 5, 1971, Galea and several union officials obstructed meat deliveries to Ruchti's cooler (Tr. 794, 799). Galea and two others persons also attempted to break through the door of the cooler with a 4 x 6 piece of lumber (Tr. 486, 817). One of Ruchti's employees trapped inside the cooler managed to escape and to phone Ruchti, who summoned the police. The assault on the cooler formed the basis for Count 7 of the indictment.

4. In May 1972 Robert Dougherty, a former partner who left Pronto in April 1970, was scheduled to appear before the federal grand jury investigating Pronto and Local 626. At a meeting between Dougherty and petitioner Grancich (Tr. 285, 332, 1202, 1215), Grancich suggested that Dougherty incriminate Pronto (Tr. 330) and say nothing about payoffs to the union (Tr. 328). When Dougherty disputed Grancich's assertion that no Teamster had taken money from any unloading company, Grancich responded: " 'None of my men have taken money. Did I make that clear?' ", and added: " 'If you put anybody in jail with your testimony, you will be taken care of. Do I make myself clear?' " (Tr. 228-229, 289).

Two days after the return of the indictment in this case, petitioners Galea and Martinez told Service Packing Company, one of Dougherty's two unloading accounts, that it should cancel the account because Dougherty and his partner, Fred Shelley, were non-union. Service Packing Company related this information to Shelley, who contacted petitioners Galea

and Martinez and was told that he could continue in business if he dropped Dougherty (Tr. 452). Shelley reported this conversation to Dougherty, who withdrew rather than see Shelley abandon the business (Tr. 297, 452). Shelley reported Dougherty's withdrawal to Galea and Martinez (Tr. 454) and, although he never obtained a union contract (Tr. 454-455), had no future problems with Local 626 (Tr. 441-444). These events formed the basis of the February 1973 indictment.

ARGUMENT

1. There is no merit to petitioners' contention (No. 75-538, pp. 84-98; No. 75-507, pp. 7-8) that their activities were not subject to prosecution under 18 U.S.C. 1962 and that in upholding their convictions the court of appeals contravened *United States* v. *Enmons*, 410 U.S. 396. Congress was concerned with "organized crime" when it passed the Organized Crime Control Act of 1970, of which Section 1962 is a part, but it prohibited "*any* person employed by or associated with" an interstate business or union from participating in or conducting the business's or union's affairs through a pattern of racketeering activity (Section 1962(c); emphasis added), and "*any* person" from conspiring to violate the other provisions of the statute (Section 1962(d); emphasis added).

Nothing in the legislative history suggests that Congress intended that the government have to prove that individuals indicted under this statute are members of organized crime, or in any other way detracts

from the plain meaning and general applicability of the statute. As the court of appeals concluded, the conduct proscribed by Section 1962 is criminal "no matter who engages therein" (Pet. App. 20). Cf. *Perez* v. *United States*, 402 U.S. 146 (Consumer Credit Protection Act, 18 U.S.C. 891); *United States* v. *Roselli*, 432 F.2d 879, 885-886 (C.A. 9), certiorari denied *sub nom. Teitelbaum* v. *United States*, 401 U.S. 924 (Travel Act, 18 U.S.C. 1952).

Enmons, *supra*, is not to the contrary and does not bar petitioners' convictions. In that case the Court held that the Hobbs Act, 18 U.S.C. 1951, does not reach activities by employees "to achieve legitimate collective-bargaining objectives" (410 U.S. at 404) or other "legitimate labor ends" (*id.* at 401).[11] On the other hand, the Court recognized that the Act prohibits extortion aimed at achieving "illegitimate objectives * * * such as the exaction of personal payoffs" (*id.* at 407) like those in this case. As the Court noted, an extortionist is not "exempted from the [Hobbs] Act solely because the extortionist was an employee or union official and the victim an employer" (*ibid.*). Accord, *United States* v. *Quinn*,

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[11] Petitioners were convicted of conspiring, in violation of Section 1962(d), to violate Section 1962(c), which prohibits the participation in an interstate enterprise through a pattern of "racketeering activity," which in turn is defined in Section 1961(1) to mean any of a number of activities already made criminal by another provision of the Code. The specific "racketeering activities" charged against petitioners involved offenses under Section 1951, which prohibits interference with interstate commerce by means of extortion.

514 F.2d 1250, 1257-1258 (C.A. 5). Moreover, the payoffs in this case were not made by parties involved in the collective bargaining, but instead were demanded by Pronto and Local 626 from innocent third parties, Blea Unloading Company and Eddie Martinez Unloading Company.[12]

In short, the immunity from federal prosecution that *Enmons* extended to coercive acts committed during a legitimate labor dispute has no application to the case at bar, where the conduct of petitioners amounted simply to extortion for personal gain and was wholly unconnected with legitimate labor ends.[13]

2. Petitioners assert (No. 75-538, p. 87) that Section 1962 is "vague and ambiguous" but do not further develop the argument. The court of appeals correctly rejected this contention as follows (Pet. App. 22):

> With respect to the argument that this statute is vague and ambiguous, it is true that, if undefined, terms such as "pattern of racketeering activity" would be unmanageable. Any ambiguity is cured by 18 U.S.C. § 1961, which defines "racketeering activity" with reference to specific offenses, "pattern of racketeering activity" with reference to a definite number of acts of "racketeering activity" within specified time periods, and "enterprise" and "person" with standard language of established meaning. The concept of affecting interstate or foreign commerce is so well imbedded in federal law as not to mislead anyone who desires to conform his conduct to the requirements of this law. *See United States* v. *Kramer*, 355 F.2d 891 (7th Cir. 1966), *cert. denied in part and granted in part*, 384 U.S. 100 (1966); *Carbo* v. *United States*, 314 F.2d 718 (9th Cir. 1963), *cert. denied*, 377 U.S. 953 (1964).

3. Petitioners' claim that Section 1962 is *ex post facto* legislation (No. 75-538, pp. 87-97) is also without merit. 18 U.S.C. 1962 did not "make criminal" (No. 75-538, p. 87) acts which were innocent prior to October 15, 1970, since the acts constituting racketeering activity must themselves be criminal under previously enacted statutes. 18 U.S.C. 1961(1). Moreover, the pattern of racketeering activity proscribed by the statute requires at least two acts of racketeering activity, one of which must occur after

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[12] Petitioner Matthews contends (No. 75-507, p. 7) that "any coercive activity with which Petitioner may have been involved took place while collective bargaining was being conducted by the Teamsters Union and Pronto." Although some coercive activity did occur during the period of collective bargaining from the latter part of 1968 to April 1969, the extorted payments from Edward Martinez continued until March 1972.

[13] Nor does *Enmons* apply to the attempt by petitioner Galea to extort $30,000 from Ruchti Transport Company by physical violence to a refrigerated locker on May 5, 1971. The $30,000 demand and the physical violence did not occur during a legitimate dispute over back wages. Ruchti Brothers, the large meat packing house against which wage claims had been directed, disposed of all claims for back wages by entering into a NLRB Settlement Agreement with Local 626 (see, *e.g.*, Tr. 1963-1964). Moreover, Ruchti Transport Company, although it was owned by Robert Ruchti, II, who previously possessed a 2/3 interest in Ruchti Brothers, was not a successor corporation to Ruchti Brothers, which closed its plant in 1970.

the effective date of the legislation. 18 U.S.C. 1961 (5).

By requiring at least one post-October 15, 1970 act, Congress avoided the prohibition against *ex post facto* laws and assured the statute's constitutionality in this respect, since "[a]nyone who has engaged in the prohibited activities before the effective date of the legislation is on prior notice that only one further act may trigger the increased penalties and new remedies of this chapter" (S. Rep. 91-617, 91st Cong., 1st Sess. 158 (1969)). See *United States* v. *Wechsler*, 392 F.2d 344 (C.A. 4), certiorari denied, 392 U.S. 932 (18 U.S.C. 1952 properly applied although only the performance of the act for which the bribe had been given occurred after the enactment of the statute); *United States* v. *Garrison*, 348 F. Supp. 1112 (E.D. La.) (acts prior to effective date of 18 U.S.C. 1511 admissible to show existence of a continuing conspiracy); *United States* v. *Kubacki*, 237 F. Supp. 638 (E.D. Pa.) (18 U.S.C. 1952 encompasses a plan, innocent when formed, provided that acts in furtherance of the plan are performed after the effective date of the statute). Petitioners' pre-1970 activities were properly admitted to show a continuing conspiracy to engage in the "pattern of racketeering activity" prohibited by Section 1962(c).[14]

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[14] These activities were also admissible to prove the commission of the 1968, 1969 and 1970 substantive offenses charged in Counts 3 through 6.

4. Petitioners contend that the trial judge's partiality denied them a fair trial (No. 75-538, pp. 99-119),[15] and in support of this argument set forth in Appendix A what they consider to be illustrations of reversible bias in the form of evidentiary rulings unfavorable to the defense, questioning of witnesses by the court, and occasions where the judge appeared to be impatient or annoyed during exchanges with counsel.[16]

The trial judge "is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law." *Quercia* v. *United States*, 289 U.S. 466, 469. It was proper for the court to question witnesses in order to present to the jury facts and circumstances relevant to the offenses charged. *United States* v. *Cassiagnol*, 420 F.2d 868 (C.A. 4), certiorari denied, 397 U.S. 1044. Moreover, many of the court's questions were asked in attempts to settle complicated questions of law or disputed questions of fact (*e.g.*,

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[15] In support of their assertion of judicial bias, petitioners argue that the Ninth Circuit in *United States* v. *Ryan*, 455 F.2d 728 "severely castigated the same trial judge * * * for * * * perpetrating the same abuses" (No. 75-538 Pet. App. A 1A). The court of appeals here, however, one member of which also comprised the panel in *Ryan*, rejected petitioners' characterization of the *Ryan* decision (Pet. App. 15, n. 21). Indeed, insufficiency of the evidence, not judicial misconduct, was the grounds for the reversal of the conviction in that case.

[16] Many of petitioners' examples of judicial bias refer to the picketing involving Ruchti Transport Company. Those charged with illegal picketing, however, were acquitted.

Tr. 460-464, 492-512, 1533-A, 1575-1582, 1602-1604, 1627-1629, 1631, 1673-1675, 1872-1877, 1900-1925, 1963-1970, 2041-2046).

Although many evidentiary rulings were unfavorable to the defense, such adverse rulings alone do not show bias and, indeed, the court also overruled objections by the government and sustained those of the defense (*e.g.*, Tr. 371-372, 1609, 1612-1613, 1653, 1999, 2006, Def. Exhs. E and F). The court of appeals "reviewed the record from the point of view of the overall impact of the judge's conduct" and correctly concluded that petitioners' allegations of judicial misconduct were "overly dramatic" (Pet. App. 15-16).[17]

5. a. Petitioner Grancich claims (No. 75-538, pp. 127-129) that there is no evidence that he arranged for the removal of the picket lines from Gold Pack or Quality or that he was involved in the subsequent demand for payment from Goldstein and Gronsky (Counts 3 and 4) by petitioner Galea.[18] The evi-

[17] Petitioners' allegation of prosecutorial misconduct is as unspecified now (No. 75-538, pp. 120-125) as it was in the court of appeals, which found "nothing upon which to rule" (Pet. App. 17). Petitioners suggest no reason why the court of appeals did not properly dispose of this contention and the issue does not deserve further review.

[18] Petitioner Matthews does not contest the sufficiency of the evidence, but he does adopt the arguments of his co-petitioners to the extent applicable pursuant to Rule 46 of the Rules of this Court (No. 75-507, p. 6). Although the co-petitioners do not contest the sufficiency of the evidence as it relates to Matthews, we show below that the evidence was sufficient in any event.

dence showed, however, that Gronsky and Goldstein complained to Grancich about the picket lines around their businesses and that the picket lines were removed a few hours after Grancich told them that their problems would be solved. Petitioner Galea, who was present at this meeting, later demanded and received payoffs from Gronsky and Goldstein for removal of the picket lines under the threat of further picketing. This was sufficient circumstantial evidence from which the jury could propery infer Grancich's involvement in both the removal of the pickets and the demand for payment.

Grancich also claims (No. 75-538, p. 129) that all of the activities attributed to him in support of his conspiracy conviction occurred prior to October 15, 1970, but here again the evidence is to the contrary: On May 19, 1972, he attempted to prevent Dougherty from giving information to federal investigators, in violation of 18 U.S.C. 1503, and the weekly payments from petitioner Matthews and co-defendant Campanale to petitioner Galea, which were shared with Grancich and Joe Loya, extended beyond October 15, 1970 (Tr. 269, 270, 273-275, 328, 330). Similarly, the $50 weekly payment from Eddie Martinez Unloading Company, which was funnelled through Matthews and Campanale to Galea, was shared with Grancich and continued after the effective date of 18 U.S.C. 1962.[19] This was enough evidence to show that

[19] Viewing the evidence in the light most favorable to the government (*Glasser* v. *United States*, 315 U.S. 60, 80), these post-1970 payoffs support the convictions of petitioners Galea

Grancich actively participated in the conspiracy after 1970.[20]

b. Finally, contrary to the contention of petitioners Galea and Martinez (No. 75-538, pp. 132-135), 18 U.S.C. 1503 does apply to grand jury proceedings.[21] See *United States* v. *Fayer*, C.A. 2, No. 75-

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and Matthews as well as Grancich, and Galea's contention (No. 75-538, pp. 131-132) that because of the general verdict there is no proof that the jury found that he had engaged in a specified conspiracy, is unsubstantial. The jury had found him guilty of both the Count 1 and the Count 2 conspiracy. The court of appeals reversed his conviction on Count 2, charging a conspiracy to extort money from meat packers, only because of insufficient evidence of an overt act after the effective date of 18 U.S.C. 1962. The above payoffs by Pronto and its competitors were in furtherance of the conspiracy alleged in Count 1, which charged conspiracy not only to extort money from meat packers but also to extort money from Pronto's competitors and to force meat packers to hire Pronto.

[20] Petitioners contend (No. 75-538, p. 130), relying on *Samuel* v. *United States*, 169 F.2d 787 (C.A. 9), that a special verdict is required in those situations where an indictment charges a conspiracy to commit more than one substantive offense. The trial court in *Samuel*, however, gave erroneous instructions with respect to one of the three substantive offenses that the defendants were charged with conspiring to commit, and since the jury's general verdict could have been based on that violation alone, the conspiracy conviction was necessarily reversed. *Id.* at 792-795.

[21] 18 U.S.C. 1503 provides in relevant part:

> Whoever * * * endeavors to * * * impede any witness, in any court of the United States * * * or any grand or petit juror * * * or injures any party or witness in his person or property on account of his attending or having attended such court * * * or on account of his testifying or having testified to any matter pending therein * * * or corruptly or by threats or force, or by any threatening

1147, decided September 24, 1975; *United States* v. *Cioffi*, 493 F.2d 1111 (C.A. 2), certiorari denied, 419 U.S. 917. *United States* v. *Ryan*, 455 F.2d 728 (C.A. 9), relied upon by petitioners, is not inconsistent: in that case the court viewed Section 1503 as applicable to grand jury proceedings, and reversed the defendant's convictions because the government failed to prove specific intent as well as to show that the records that the grand jury called for (and that the defendant was charged with destroying) were relevant to the grand jury's inquiry. See also *United States* v. *Kahn*, 366 F.2d 259 (C.A. 2), certiorari denied, 385 U.S. 948; *Shimon* v. *United States*, 352 F.2d 449 (C.A.D.C.).

Nor is there merit to petitioners' claim that business losses are not injuries to "property" under Section 1503. Even assuming that the immediacy of the harm threatened has any bearing on the statute's coverage, threats to damage business interests are no more "speculative and indefinite" (No. 75-538, p. 135) than threats to damage particular, tangible property.

> letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

RICHARD L. THORNBURGH,
Assistant Attorney General.

JEROME M. FEIT,
MICHAEL J. KEANE,
Attorneys.

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